

The 8th December, 1976

No. 12510-4Lab-76/33863.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Escorts Ltd., Plant II, Mathura Road, Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 176 of 1971

between

Shri Sharda Nand workman and the management of M/s Escorts Ltd., Plant II, Mathura Road, Faridabad.

AWARD

By order No. ID/FD/205-F-71/28703—07, dated 21st September, 1971 of the Governor of Haryana, the following dispute between the management of M/s Escorts Ltd., Plant II, Faridabad and its workman Shri Sharda Nand, was referred to this Court for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

“Whether the termination of services of Shri Sharda Nand was justified and in order? If not, to what relief is he entitled?”

The parties put in their appearance in this Court in response to the usual notices of reference sent to them. The management filed their written statement in reply to the notice of demand dated 21st April, 1971 served on them by the workman and the latter filed his rejoinder.

The workman alleged while raising a demand on the management for his reinstatement that he while being in service of the management as a drill-man on wages of Rs 150 per mensem in a permanent capacity remained under treatment in E.S.I. Hospital, Faridabad during the period from 1st December, 1970 to 16th April, 1971, and that he sent medical certificates to the management in respect of his illness, from time to time. He added that the management illegally struck off his name from their attendance register and that he was not allowed to join his duties on 17th April, 1971 when he went to the factory for that purpose and that he was thus entitled to reinstatement with full back wages and continuity of service.

The management,—*vide* written statement filed by them pleaded that the workman absented himself from duty from 26th November, 1970 without obtaining any permission and that he subsequently submitted two applications for grant of leave, one dated 26th November, 1970 for one day and the other for grant of leave from 27th November, 1970 to 2nd December, 1970 on medical grounds along with E.S.I. Hospital slips the last being dated 9th January, 1971. They stated that the workman did not apply for leave after 2nd December, 1970 and that he remained absent without any intimation to them for more than two months after the expiry of his leave on 2nd December, 1970 and lost his lien on the job under their Certified Standing Orders, automatically after ten days of continuous absence. They gave out that they intimated to the workman the fact of his losing lien on the job on 22nd April, 1971 and that the allegations made by him in his notice of demand were put under enquiry held by Shri P.C. Aggarwal, their Industrial Relation Officer and the workman did not participate in the enquiry despite notice with the result that his allegations remained unsubstantiated. They denied the allegation that the workman reported for duty on 17th April, 1971 and stated that he came to them for reporting on duty on 22nd April, 1971.

The workman admitted having failed to make any application for extension of leave for 2nd December, 1970,—*vide* rejoinder filed by him and pleaded that submission of medical certificates from E.S.I. Hospital was sufficient and that the action of the management in striking off his name under their Certificate Standing Orders was illegal.

The following issues were thus framed on pleas of the parties.— *vide* order dated 17th November, 1971 :—

1. Whether the applicant was absent without leave and has automatically lost his lien of his service as per Standing Orders?
2. Whether the applicant was actually ill up to 16th April, 1971 and for this reason the termination of his service is not justified?

Issue No. 1.—The workman admittedly did not apply for extension of his leave after 2nd December, 1970. He admittedly reported for duty along with the fitness certificate on 17th April, 1971 and not earlier than this

date. It has become thus necessary to state *in extenso* the relevant provisions of clause 22 of the Certified Standing Orders of the management on the subject of grant of earned leave as under :-

"Leave with wages shall be allowed to all workmen in accordance with Chapter VIII of the Factories Act, 1948. A workman, who desires to avail of his leave due under the Factories Act otherwise than in accordance with the scheme approved by the Chief Inspector of Factories under section 79(8) and (9) shall apply to the Manager for it in the manner prescribed below :-

- (1) An application shall be made in writing to the Manager or the person authorised and notified for the purpose standing clearly the date from which the leave is required, reasons warranting the grant of such leave and the duration for which it is required, giving the address for the communication during the period of leave and shall be submitted to the Officer notified for the purpose or the Manager, at least 15 days in advance, if the leave is for a duration longer than three days and two days in advance if the duration applied for is upto three days, except when it is on medical grounds, death or serious illness in the family, accident or fire in the personal house or any such natural catastrophe in which case the application may be made the same day. Orders on the leave application shall be passed without delay and always before the leave applied for is to commence or within twenty-four hours of the receipt of the application in case it is received on the same day under the circumstances mentioned above and shall be communicated to the workman and in the alternative it shall be presumed that the leave applied for has been sanctioned to the workman.
- (2) If the leave applied for is granted, a leave pass shall be issued to the workman. If it is refused, the fact of such refusal shall be communicated to the workman before the leave applied for is to commence.
- (3) In the event of a workman desiring extension of the originally sanctioned leave or a subsequently extended and sanctioned leave, he shall make an application in writing to the Manager specifically stating the reasons warranting such an extension and shall submit it sufficiently in advance of the expiry of the leave allowed. The Manager or any other authorised person on his behalf shall as soon as possible on receipt of such application inform the workman on the address given by the applicant whether the extension applied for has been sanctioned or refused. Reply shall be sent without delay under a certificate of posting. If the workman desires a telegraphic reply by the management he shall send a reply paid telegram.
- (4) If the workman remains absent without sanctioned leave or beyond the period of leave or finally granted or subsequently extended he shall lose his lien on his appointment unless (a) he returns within 10 consecutive days of the commencement of the absence or the expiry of the leave and (b) explains to the satisfaction of the Manager the reason of his absence or his inability to return on the expiry of the leave, as the case may be."

It would, thus, appear from a plain reading of the provisions of the Certified Standing Orders reproduced above, that the workman on his admissions of facts shall be deemed to have lost his lien on the job. I thus, decide this issue in favour of the management.

Issue No. 2.—Exhibit M.W.1/4, an E.S.I. Hospital slip relied on by the management disclose that the workman was fit to join duty on 2nd December, 1970 and, E.S.I. Hospital slip could be brought on record by the workman indicating his admission in the E.S.I. Hospital after that date. It is for this reason alone that the workman applied for grant of leave only upto 2nd December, 1970 *vide* application Exhibit M.W.1/5 when he was declared fit for attending his duty. The workman, however, appearing as his own witness relied on medical certificates Exhibit W.W.1/2 to W.W.1/10 showing his having consulted the E.S.I. Hospital authorities from time to time as an outdoor patient, each bearing an endorsement of the authorities for reference to particular department of E.S.I. Hospital. None of these slips in my opinion established the illness of the workman beyond 2nd December, 1970. The E.S.I. Hospital slip dated 16th April, 1971, Exhibit W.W.1/10 against indicated the admission of the workman as an indoor patient upto 1st December, 1970. The workman admitted having not sent any of the slips Exhibit W.W.1/2 to Exhibit W.W.1/9 to the management. He further admitted that there was a noting in the slip Exhibit W.W.1/7 that he received treatment outside the E.S.I. Hospital and was maltreated.

The evidence of Shri V.K. Malhotra, W.W. 3 related to the records as he admitted that the workman never remained under his treatment. He admitted that the workman remained absent from the Dispensary, from 8th December, 1970 to 10th December, 1970, 30th January, 1971 to 1st February, 1971, 9th February, 1971 to 12th February, 1971, 21st February, 1971 to 3rd March, 1971, 11th March, 1971 to 14th March, 1971, 16th March, 1971 to 22nd March, 1971, and 6th April, 1971 to 7th April, 1971. He admitted that there was a blank undated certificate in the records brought by him. The evidence of this witness and the records brought by him cannot, thus, be relied upon under the circumstances stated above.

I am, thus, satisfied that there is no cogent reliable evidence on record in respect of the ailment of the workman after 1st December, 1970 and the case put forth by him in this connection is proved to be false and fabricated by his own admissions. I, therefore, decide this issue against the workman without considering it necessary to discuss the evidence led by the management.

The result is that the demand raised by the workman on the management is proved to be un-justified and he is not entitled to any relief. I hold accordingly and answer the reference while returning the award in these terms.

Dated the 15th July, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 1671, dated the 19th July, 1976.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

The 13th December, 1976

No. 10534-4Lab-76/34101.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Beas Engineering Company (P) Limited, Sonapat.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 124 of 1972

between

SHRI RAM SINGH, WORKMAN AND THE MANAGEMENT OF M.S BEAS ENGINEERING
COMPANY (P) LIMITED, SONEPAT

AWARD

By order No. ID/RK/188-B-72/11429—33, dated 3rd April, 1972, the Governor of Haryana, referred the following dispute between the management of M/s Beas Engineering Company (Pvt.) Limited, Sonapat and its workman Shri Ram Singh, to this Court, for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 : —

Whether the dismissal of Shri Ram Singh was justified and in order ? If not, to what relief is he entitled ?

The parties put in their appearance in this Court in response to the usual notices of reference sent to them and filed their pleadings.

The workman alleged, —*vide* notice of demand served by him on the management that his services had been illegally terminated by the later verbally with effect from 17th December, 1971 and the enquiry held against him was not in accordance with the principles of natural justice and therefore was liable to be vitiated. He stated that he had been victimized due to his Trade Union activities by the management and charges framed against him remained unestablished.

The management, —*vide* written statement filed by them denied the allegations that the enquiry held against the workman was illegal and against the principles of natural justice. They pleaded that the order of termination of services of the workman conveyed to him, —*vide* letter, dated 17th December, 1971 was legal and correct in all respects and had been made as a result of a proper enquiry held against him according to the principles of natural justice into the charge-sheet served on him in respect of his misconduct rendering him liable to dismissal. The workman controverted the pleas of the management and reiterated the allegations made by him in the notice of demand, —*vide* rejoinder filed by him with the result that the following issue was framed on pleas of the parties, —*vide* order, dated 28th February, 1973 : —

“Whether the dismissal of Shri Ram Singh was justified and in order ? If not, to what relief is he entitled ? ”

The workman died during the pendency of the reference and his widow Smt. Murti made an application for grant of relief admissible to her husband Ram Singh, in her favour and her five minor children.

The workman was charged of the misconduct of his having slowed down his work resulting in financial loss to the management, in subordination and disorderly behaviour and acts subversive of discipline, during working hours. The explanation Ex. M. 2 made by him in reply to the charge-sheet Ex. M. 1 was found to be unsatisfactory. The management initially appointed Shri S. K. Bansal as the Enquiry Officer and on an objection raised by the workman against such an appointment, the management appointed Shri S. R. Bharadwaj as an enquiry officer in place of Shri S. K. Bansal. Shri S. R. Bharadwaj thus gave his findings Ex. M. 3 as a result of the enquiry held by him and Shri S. K. Bansal against the workman, while holding all the charges established leading to his dismissal,—vide order, dated 17th December, 1971 Ex. M.3.

The management in order to establish their case on the issue stated above, examined Shri S. K. Bansal, M.W. 1, Shri S. R. Bharadwaj M.W. 2, Enquiry Officers besides Shri H. S. Jabbal, their Managing Director and closed their case. S/Shri S. K. Bansal and S. R. Bharadwaj proved the proceedings of the enquiry, Ex. M. 5 and Ex. M. W. X 2, respectively taken up by them. Each one of them gave out that the enquiry was held by him according to the principles of natural justice with full opportunity to the workman to take part therein. Nothing could be brought out in cross-examination any of these witnesses leading to me hold his evidence as false or unreliable. I have also carefully gone through the proceedings of the enquiry Ex. M. 5 and Ex. M.W.X. 2 and find the same strictly in accordance with the principles of natural justice with full opportunity to the workman to participate in the enquiry. The bare oral statement of Shri Ram Singh, workman that Shri S. K. Bansal misbehaved towards him and asked him to submit his resignation, un-corroborated by any other evidence is not sufficient to rebut the evidence of the witness examined by the management particularly when no such suggestion was made to Shri S. K. Bansal in his cross-examination. The statement of Shri Ram Singh that even Shri S. R. Bharadwaj recorded the proceedings of the enquiry in his absence has no merit and cannot be relied upon. None of the witnesses examined by the management was proved or shown to have any enmity with the workman and could not as such be said to have any motive to depose falsely against him. The evidence of S/Shri S. K. Bansal and S.R. Bharadwaj is found further corroborated by the documents on record and the proceedings of the enquiry referred to above.

I, thus, relying on the evidence of these witnesses and having regard to the proceedings of the enquiry, hold that the findings Ex. M. 3 of the enquiry officer holding the charges established, are borne out from the records of the enquiry and does not call for any interference from this Court. I find ample evidence on record in justification of the finding Ex. M. 3.

Considered from any angle the order of dismissal of the workman Ex. M. 3 made by the management on consideration of the findings of the enquiry Ex. M. 3 is fully justified and is in order and the workman is not entitled to any relief. I decide the issue accordingly with a finding that the deceased workman and Smt. Murti his widow who had applied for grant of relief admissible to her husband, are not entitled to any relief. I, thus answer the reference while returning the award in these terms.

MOHAN LAL JAIN,

Dated the 30th September, 1976.

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 2230, dated the 4th October, 1976.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 10535-4Lab-76/34111.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Dalima Dadri Cement Limited, Charkhi Dadri.

BEFORE SHRI MOHAN LAL JAIN PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK.

Reference No. 92 of 1975

between

SHRI RISAL SINGH, WORKMAN AND THE MANAGEMENT OF M/S DALIMA DADRI
CEMENT LIMITED, CHARKHI DADRI.

AWARD

By order No. ID/HSR-92-A-75/64374, dated 16th October, 1975, the Governor of Haryana, referred the following dispute between the management of M/s Dalmia Dadri Cement Limited, Charkhi Dadri and its workman Shri Risal Singh to this Court, for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

“ Whether the termination of services of Shri Risal Singh was justified and in order ? If not, to what relief is he entitled ? ”

The parties put in their appearance in this court in response to the usual notices of reference sent to them and filed their pleadings.

The workman alleged,—*vide* claim statement filed by him in conformity with the notice of demand served by him on the management that the order of his discharge in simpliciter from services, conveyed to him by the management,—*vide* their letter, dated 26th May, 1975 as a result of loss of their confidence in him, was illegal and arbitrary and he was entitled to be reinstated in their service as a clerk with continuity of service and full back wages. He stated that his signatures were obtained on a blank *pro forma* by Shri Bhim Sain, President of the Union through some person, after one month of his appointment as a clerk on 7th December, 1971, and that the entries relating to his qualifications which were subsequently to be found incorrect were made by Shri Bhim Sain and were never made at his instance and that he as such was not responsible for these incorrect entries.

The management,—*vide* written statement filed by them pleaded that there was no industrial dispute between the parties and as such the reference made to this court was bad in law. On merits they stated that the workman had made a false declaration in his application submitted by him in the year 1971 for employment, that he had passed the Matriculation Examination from the University of Bhopal in the year 1965 in third division and that they appointed him only on the basis of such a declaration and that on their coming to know in the year 1975 about the falsity of this declaration, they lost confidence in him and discharge him from service in simpliciter, in bona fide exercise of their powers and that this order did not call for any interference.

The workman stated—*vide* rejoinder filed by him that the order of the management of discharging him from service in simpliciter was in fact *mala fide* and a device adopted by the management for terminating his services. The following issues were thus framed by me on pleas of the parties,—*vide* my order dated 31st December, 1975 :—

1. Whether the reference made by the Governemnt to this court is bad in law for the reasons stated in the written statement ?
2. Whether the action of the management in terminating the services of Shri Risal Singh in simpliciter as a lost of confidence in his *mala fide* and illegal ?
3. Whether the workman signed the declaration in respect of his qualifications without knowing its contents ?
4. Whether the termination of services of Shri Risal Singh was justified and in order ? If not, to what relief is he entitled ?

I have heard learned authorised representatives for the parties and seen the record. I propose to decide the issues as under :—

Issue No. 3 :

This being an important issue of fact shall be decided by me first. The workman admitted his signatures at mark 'A' on the application Ex. M. 1. He, however, explained that his signatures were obtained by Shri Bhim Sain, President of the Union on an application *pro forma* and the entries in the application were made by the later subsequently without his knowledge. He in order to prove this fact examined Shri Ram Chander Yadav and Shri Balbir Singh, his co-workmen who supported his case. Shri Ram Chander Yadav deposed that Shri Bhim Sain, President of the Union gave him a printed blank *pro forma* for obtaining the signatures of the workman concerned and that he accordingly obtained his signatures. Shri Balbir Singh gave out that Shri Ram Chander Yadav in his presence obtained the signatures of the workmen concerned on a blank *pro forma*. It is, however, interesting to note that the workman did not mention the name of Ram Chander Yadav as the person obtaining his signatures on the application *pro forma* relating to his appointment as a clerk either in the notice of demand or in the claim statement and the story of Shri Bhim Sain have sent Shri Ram Chander for obtaining his signatures on the blank *pro forma* is obviously an after-thought liable to be rejected on this short ground. The workman Shri Ram Chander Yadav and Balbir Singh admitted that they never informed any person about the incident and such an admission renders their evidence un-reliable. Shri Risal Singh being admittedly literate could not be expected in the ordinary course to sign a blank *pro forma* and the

story put forth by him appears to be false and fabricated. I, thus, for the reasons aforesaid decide this issue against the workman.

Issue No. 2 :

The false declaration made by the workman in respect of his qualifications in application Ex.M.1 having come to the knowledge of the management in the year 1975 and the workman being not able to substantiate the correctness of his qualifications of having passed the Matriculation Examination when asked for, their action in discharging him from service in simpliciter cannot be said to be mala fide and illegal by any stretch of imagination. It can on the other hand be safely held that they were well entitled to lose confidence in the workman on coming to know of the false declaration made by him in his application, relating to his qualifications. I, thus, decide this issue in favour of the management.

Issue No. 1 :

The management did not press the pleas covered by this issue and they on the other hand conceded that the Labour Court could X-Ray the order of discharge of the workman from service in simpliciter and find out if it was bona fide or mala fide. I decide this issue against them.

Issue No. 4 :

Finding no escape from the decision made by me on issues No. 1 and 2, the learned authorised-representative for the workman relied on "1976-ILLJ-478" where in it was held that termination of services of the workman for any reason what so ever otherwise than as a punishment inflicted by way of disciplinary action or on the ground of continued ill health or voluntary retirement or retirement on his reaching the age of superannuation, amounted to retrenchment within the meaning of section 2 (00) of the Industrial Dispute Act (Here in after referred to as the Act. He thus strongly contended, that the order of discharge of the workman from his service in simpliciter amounted to his retrenchment and the management having admittedly not complied with the provisions of section 25 F of the Act, by way of payment to him of the retrenchment compensation etcetra, the order was liable to be set aside on this ground alone. I have given this matter my careful consideration. It is pertinent to note that the legal plea now so strongly taken up by the workman during arguments neither finds mention in the notice of demand nor in the claim statement and cannot as such be allowed to be taken at this late stage. Even otherwise the authority relied on by the workman did not admittedly relate to the case of a discharge of the workman from his service in simpliciter and does not disclose the want of plea of the workman of his case falling under the definition of retrenchment, at the proper stage and as such is not applicable to the case in hand. The order of discharge of a workman from service as a result of loss of confidence in him by the management, has been held to be valid, by the Honourable Supreme Court, from time to time, in authorities reported as "1975-ILLJ-262 (Supreme Court between L. Michael and others and M/s John Sons Pumps India Limited.)" "1960-II-LLJ-222 (between Chartered Bank V/S. Chartered Bank Employees Union)", "1965-ILLJ-422 (between Murugan Mills Limited and Industrial Tribunal, Madras)" and "1972-ILLJ-501 (between Air India Corporation & Y. A. Rebellow)" if it was found on facts to be bona fide and not a colourable device to weed him out mala fide. Retrenchment is found separately mentioned at item No. 10 in the III Schedule as distinct from discharge or dismissal of the workman stated at item No. 3 of the II Schedule of the Act and the distinction is patent and glaring on this account as well and it cannot be said that discharge of the workman from service in simpliciter amounts to his retrenchment under section 2(00) of the Industrial Disputes Act. I, thus for the reasons aforesaid decide this issue in favour of the management with finding that the workman is not entitled to any relief.

I, accordingly, answer the reference while returning the award in these terms.

Dated 30th September, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 2229, dated 4th October, 1976

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.